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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3775 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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AP PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR P.C.KAVINA FOR MR. PM THAKKAR for Petitioner  
NOTICE SERVED for Respondent No. 1  
Mr. M.A.Bukhari A.G.P. for Respondent No. 2  
MR HS MUNSHAW for Respondent No. 3  
MR RJ OZA for Respondent No. 4

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 16/07/1999

ORAL JUDGEMENT

#. In this petition under Article 226 of the Constitution of India, the short question which arises for determination and adjudication is whether the impugned order of the Government through the Under Secretary, Panchayat and Rural Housing Department dated 24.10.89 produced at Annexure.G to the petition is

sustainable in law or not.

#. In order to examine and appreciate the merits of the aforesaid question which has been posed before this Court, let us have the skelton projection of material facts giving rise to this petition. The petitioner was working as an employee of the Panchayat. He had sought correction in his service record about his date of birth from 13.8.1929 to 13.8.1930 in view of the school record made at the relevant time in 1947. After perusing necessary papers, the respondent no.2 District Development Officer held in favour of the petitioner and accordingly permitted to change the recording of the date of birth from 13.8.1929 to 13.8.1930 as requested on the basis of the school record produced. The petitioner submitted an application dated 24.11.1982 to the respondent no.3 for the correction of date of birth copy of which is at Annexure-B to the petition which came to be accepted upon verification and accordingly the order dated 22.2.1984 came to be recorded by the respondent no.3 and the resultant change followed in the service record. Not only that said order came to be confirmed by the respondent no.2 by his order dated 22.5.89 copy whereof is produced at Annexure. F to the petition.

#. Subsequently the impugned order at Annexure.G dated 24.10.1989 came to be recorded cancelling the earlier order of DDO granting the correction in the date of birth in the service book retrospectively without giving an opportunity of hearing to the petitioner who had retired upon superannuation with effect from 31.8.1988. The impugned order is dated 22.5.1989. Thus the impugned order quashing the order of DDO by the Development Commissioner has been passed after almost ten months of the retirement of the petitioner on the basis of correct date of birth which is 13.8.1930. Necessary entry in the serviced book came to be recorded and confirmed on 22.2.84. Accordingly the petitioner received salary, increments and continued to work upto 31.8.1988. The impugned order undoubtedly radiates that the petitioner has been visited with penal consequences and also civil consequences without getting an opportunity of being heard which is diametrically opposite to the doctrine of "audi alteram partem", since the recovery of the amount of increment during the last year of service of the petitioner was sought, relief is also claimed against such an illegal action. In short it is the case of the petitioner that he is entitled to all the pensionary benefits treating the entire period of service till the date of actual retirement took place on 31.8.1930. The contention of the respondent authorities is that the

period of last year cannot be considered for computation of pensionary benefits, as the change effected in the date of birth and resultant change in the service book was not bonafide and therefore at the best, the last year's service could be treated as fresh appointment.

#. After having considered the facts and circumstances and the rival submission raised before this court, it is evident that the impugned order of the respondent no.2 dated 22.5.89, copy of which is at Annexure.F to the petition, is tainted with vice of the principle of audi alteram partem and also full application of mind. Only on this ground itself, it merits to be revoked restoring the order recorded by the respondent no.3 and confirmed by respondent no.2. In the result, the impugned order is quashed and set aside. The decision of the respondent authority to treat the petitioner retired from service with effect from 31.8.1987 and to treat the period from 1.9.1987 till 31.8.1988 as fresh appointment of the petitioner as projected in the impugned order dated 24.10.1989 by the respondent no.1 is held to be invalid and illegal. The recovery sought pursuant to the said order is also invalid and bad in law. The petitioner, obviously, therefore, through out entitled to all the pensionary benefits treating the last year period as regular service period. Therefore, the pensionary benefits and the resultant entitlements shall be paid to the petitioner by the respondent authority computing the period from 1.9.87 to 31.8.88 as regular and continuous service period and the resultant delay occurred in making payment thereof is also required to be compensated. The respondents are, hereby, ordered and directed to pay all the retiral benefits with 12 percent interest per annum on the delayed payment till the payment is made. It is also directed that the recovery effected pursuant to the impugned order which has been now quashed shall be reimbursed to the petitioner with interest at 12 percent. The application is partly allowed. Rule is made absolute to the aforesaid extent. No costs.